Case and Comment
THE LAWYER'S MAGAZINE

POCKET EDITION Vol. 32, January-February-March—1926; No. 1

Established 1894. Published by The Lawyers Co-operative Publishing Company. President, W. B. Hale; Vice-President, J. B. Bryan; Treasurer, G. M. Wood; Secretary, Ezra A. Hale; Editor-in-Chief, Henry P. Farnham. Office and plant: Aqueduct Building, Rochester, New York. Editor, Asa W. Russell.

Recent Decisions of the U. S. Supreme Court

BY HENRY P. FARNHAM
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THE Supreme Court of the United States has recently made a contribution to the law of search and seizure in holding that the arrest of several persons who are alleged to have conspired to violate a Federal statute does not justify the search, without warrant, of the premises of one of them located some distance from the place of the arrest. Also that an application for the return of property seized in a search without warrant, is not necessary to exclude it from evidence when the facts showing a violation of the Constitution are not in controversy. Agnello v. United States, 70 L. ed. (Adv.) 1. The court has also held that inability of one because of poverty, to bear the expense of proceedings in a state court for relief from an order imprisoning him for contempt, will not justify resort to a Federal court for relief by writ of habeas corpus. United States ex rel. Kennedy v. Tyler, 70 L. ed. (Adv.) 5.

The doctrine that every one is charged with knowledge of the law is applied to deny to a shipper a right of recovering the full value of his shipment when lost by the negligence of the carrier where to the knowledge of the carrier he

was ignorant of the value of the property shipped, and also of the fact that rates were based on value while he named a value carrying a rate lower than was necessary for the true value of his shipment. American R. Exp. Co. v. Daniel, 70 L. ed. (Adv.) 14.

Arkansas ex rel. Utley v. St. Louis-San Francisco R. Co. 70 L. ed. (Adv.) 43, reiterated the doctrine that a court may compel a county to levy a tax to satisfy a judgment against it. In Beazell v. Ohio, 70 L. ed. (Adv.) 45, the court calls attention to the change in the law by the adoption of a rule that statutory changes in the mode of trial or in the rules of evidence which do not deprive an accused of a defense but operate only in a limited and unsubstantial manner to his disadvantage, do not operate as ex post facto laws.

The extreme care which a corporation must exercise in attempting to install in another state the object of its sale in interstate commerce without complying with the laws of the latter state which will permit it to do business within such state, is illustrated by Kansas City Structural Steel Co. v. Arkansas, 70 L. ed. (Adv.) 53, where the court held that a foreign corporation contracting to erect a bridge within the state becomes subject to the local law if it ships the material to itself within the state and then delivers it to the subcontractor to be used in the structure.

The futility of attempts to evade liability for taxes as well as the tendency of all branches of the government to look with favor upon the fixing of tax liability, is illustrated by Burk-Waggoner Oil Asso. v. Hopkins, 70 L. ed. (Adv.) 67, which holds that Congress may subject an unincorporated joint stock company or common law trust, to income taxes as though it were a corporation, although under the laws of the state of its organization it was merely a partnership.

The peril of attempting to do business with the government, is illustrated by Lipshitz & Cohen v. United States, 70 L. ed. (Adv.) 69, in which the government in attempting to dispose of some junk asked bids, with a statement that stated weights are approximate and must be accepted as correct, was guilty of no breach of contract, although there was an approximate shortage of 50% of the stated weights in the material tendered.

That a public service corporation is entitled to some protection against arbitrary dictation as to what service it shall render, is indicated by People ex rel. Woodhaven Gaslight Co. v. Public Service Commission. 70 L. ed. (Adv.) 92, which holds that a state cannot under the guise of regulation require a public service corporation

to make large expenditures for the extension of its service in a new territory when the necessary result will be to compel the corporation to use its property for the public convenience without just compensation. A rather interesting pronouncement appears in the ruling that the law against usury does not prevent the allowance of interest on the original claim. Louisville & N. R. Co. v. Sloss-Sheffield Steel & I. Co. 70 L. ed. (Adv.) 94.

Before the Court adjourned for the summer vacation it settled with respect to the perennial controversy as to what is and what is not unlawful monopoly, that members of a trade association who are engaged in the production of a particular commodity do not violate the Sherman Anti-Trust Act or engage in unlawful restraint of commerce by computing and distributing among the members of the association information as to the average cost of the product, or as to freight rates from a centrally located point, or as to trade statistics, such as production and aggregate surplus stock and prices received in actual course of business, or by holding meetings at which trade conditions are discussed, in the absence of proof of agreement or concerted action actually reached or attempted to lessen production or arbitrarily raise prices beyond the level of production or prices which would prevail if no such agreement or concerted action ensued. Maple Flooring Mfrs. Asso. v. United States, 268 U. S. 563, 69 L. ed. 1093.

A rather fine distinction was made in Marr v. United States, 268 U. S. 536, 69 L. ed. 1079, over what had been held with respect to taxation of stock dividends by holding that the increased value of stock issued by a new corporation in exchange for stock of a prior corporation, the assets of which it was organized to take over, is subject to taxation as income to the holder, although the income simply represents profits of the old corporation and the capital remains invested in the same general enterprise.

If stock dividends made by the corporation itself are not taxable, as held in Eisner v. Macomber, 252 U. S. 189, 64 L. ed. 521, and if the stockholders of a corporation are not taxable upon the increased value of their stock but to the organization of a new corporation to take over the business of the old one, as held in Weiss v. Stearn, 265 U. S. 242, 68 L. ed. 1001, it is a little difficult for the ordinary person to see why when the corporation apparently reorganizes itself to carry on the same business, thereby increasing the value of its stock the old stockholders to whom the new stock is distributed should be taxable upon the increased value as income; and even some of the Supreme Court Judges of the United States could not see the distinction.

The Frick Case and Equitable Conversion

BY GEORGE H. PARMELE

THE denial by the United States Supreme Court in Frick v. Pennsylvania, 268 U. S. 473, 69 L. ed. 1058, 45 Sup. Ct. Rep. 603, — A.L.R. —, of the power of the state of decedent's domicil to exact a succession or transfer tax in respect of tangible personal property having an actual situs in another state at the time of decedent's death, or to include the value of such property in measuring the amount of the tax payable in respect of the property at the domicil, raises a number of interesting and important collateral questions. One of them relates to the effect of that decision upon the doctrine —which has obtained for many years in Pennsylvania,[1] and was adopted in Iowa[2] a few years and and in South Carolina[3] a few months before the decision in the Frick Case—by which the principle of equitable conversion is applied for the purpose and with the result of exacting the tax at the domicil in respect of the proceeds or the value of real property in another state, which has been equitably converted by the decedent's will. It seems doubtful, to say the least, whether this doctrine can survive the declaration of principles in the Frick Case. It is true that in case of the equitable conversion of real property into personalty, the property in question first acquires its character as personalty at the time of the testator's death, and in its character as personalty, never, like the tangible personalty in the Frick Case, had an actual situs apart from the domicil. The reality is, however, that the substance out of which by a legal fiction a value taxable at the domicil is created, had its fixed, unchangeable situs apart from the domicil, and since under the decision in the Frick Case, the state of the domicil must respect the actual situs which tangible chattels had in the other state at the time of the decedent's death and forego its own tax in respect of them, notwithstanding that prior to that

[1] See Van Uxem's Estate (1905) 212 Pa. 315, 61 Atl. 876, 1 L.R.A. (N.S.) 400; Dalrymple's Estate (1906) 215 Pa. 367, 64 Atl. 554.

[2] Re Sandford (1919) 188 Iowa, 833, 175 N. W. 506.

[3] Land Title & T. Co. v. South Carolina Tax Commission (1925) — S. C. —, 126 S. E. 189, — A.L.R. —.

event it was within his power to change that situs, it does not seem admissible by a species of legal legerdemain to take a different view of property which before its transmutation had an indissoluble connection with and situs in another jurisdiction. Even before the decision in the Frick Case, and when it was generally assumed that the power of the domicil, under the principle Mobilia sequuntur personam, extended to the imposition of the tax upon the transfer of or succession to all personal property, including tangible chattels having an actual situs elsewhere, the weight of authority outside of the jurisdictions already referred to was against the application of the principle of equitable conversion for the purpose of these taxes.[4] And that assumption undoubtedly underlies the doctrine which applies that principle for such purpose. The South Carolina court, whose decision preceded by a few months, that of the Federal Supreme Court in the Frick Case, said arguendo: "Where, therefore, by the law of the domiciliary state taxing the universal succession, the testator's real estate situated in other states is, by the terms of the will, converted into personalty, from the viewpoint of practical results there would seem to be no more substantial or valid reason for excluding the value of the converted real estate in measuring the excise tax upon the universal succession than for excluding the value of the tangible personal property of the testator, physically situated in another state." The premise of this argument is, of course, destroyed by the subsequent decision in the Frick Case.

The Pennsylvania courts have consistently applied the principle of equitable conversion, when the will satisfied the conditions of that principle, both with the result, as already indicated, of exacting the tax in respect of the proceeds or value of a Pennsylvania decedent's real property located in another state, and with the result of foregoing the tax in respect of real property located in Pennsylvania belonging to the estate of a nonresident equitably converted by his will.[5] This is also the implication of the Iowa and South Carolina cases above referred to. The power of the state of the domicil thus to apply the principle with the result of foregoing its own tax is not of course, directly impaired by the decision in the Frick Case; but its continued exercise is not to be expected if, as above suggested, the decision in that case is fatal to its application conversely.

[4] See Re Swift (1893) 137 N. Y. 77, 32 N. E. 1096, 18 L.R.A. 709; Connell v. Crosby (1904) 210 Ill. 380, 71 N. E. 350; State v. Fusting (1919) 134 Md. 349, 106 Atl. 390; McCurdy v. McCurdy (1908) 197 Mass. 248, 83 N. E. 881, 14 Ann. Cas. 859; 16 L.R.A.(N.S.) 329.

[5] See Schoenberger's Estate (1908) 221 Pa. 112, 70 Atl. 579, 128 Am. St. Rep. 737, 19 L.R.A.(N.S.) 290.

Banker's Duty of Secrecy

BY JOSEPH T. WINSLOW

WHILE not all cases from the British courts are of interest and value to the American lawyer there are many decisions from these courts which impress themselves forcibly upon the American practitioner as being particularly pertinent and helpful in the preparation of his cases and in the solution of his legal problems. In a recent case Tournier v. National Provincial & Union Bank [1924] 1 K. B. 461, reported in 12 B. R. C. 1021 there came before the English Court of Appeals a case involving a question of especial interest to lawyers, bankers and business men alike, namely whether there exists as an implied term of the contract between a banker and his customer that the former will not divulge to third persons, without the customer's consent, either the state of the customer's account or any of his transactions with the bank, or any information relating to the customer acquired through the keeping of his account. It is extremely complimentary to the members of the banking profession that hitherto there has been little similar litigation. It appeared in the Tournier Case that the plaintiff had been a customer of the defendant bank and that a check had been drawn by another customer in the plaintiff's favor and that the latter instead of paying it into his own account indorsed it to another person who had an account at a second bank and that on the return of the check to the defendant bank its manager upon inquiry of the other bank as to who the person was to whom it had been paid was told that it was a bookmaker, and this information the defendant bank disclosed to a third person. Two members of the Court of Appeal adopted the view that the disclosure constituted a breach of the defendant's duty to its customer, holding that although the information was acquired, not through the plaintiff's account, but through that of the drawer of the check, it was nevertheless acquired by the defendant during the currency of the plaintiff's account and in its character as a banker. Scrutton, L. J., however reached a contrary conclusion holding that although the disclosure was a breach of the defendant's duty to the drawer, it was not a breach of its duty to the plaintiff. Banks, L. J., one of the majority members of the court,

stated that it may be asserted with confidence at the present day that the duty of a banker towards a customer not to disclose his affairs is a legal one arising out of contract. He asserted however that such duty is not absolute but qualified and stated that it was impossible to frame any exhaustive definition of the duty, but that the qualifications could be classified under the following heads, (1) where disclosure is under compulsion of law, (2) where there is a duty to the public to disclose, (3) where the interests of the bank require disclosure, (4) where the disclosure is made by the express or implied consent of the customer.

These qualifications appear to afford the requisite protection to bank customers. Their application however to the particular facts of each case necessarily presents an individual problem, as is illustrated by the case above commented on.

HIS READY TONGUE

In one of Lloyd George's early campaigns some one threw a brick through the window, and it fell on the platform at his feet. Picking it up, he cried: "Behold the only argument of our opponents." From the gallery, a sullen fellow kept calling out "Rats! Rats!" in one of his meetings. "Will some one please take the Chinaman his dinner?" was the witty and effective reply. Once when he was talking on "home rule" he said, "I want home rule for England, for Scotland, for Wales, for Ireland" —At this point some one shouted, "Home rule for hell." "That's right," he shot back "Every man for his own country." In another gathering a man shouted. "Oh, you're not so much. Your dad used to peddle vegetables with a donkey and cart." "Yes," said the orator, "that is true. My father was a very poor man. The cart has long since disappeared, but I see the donkey is still with us."

—Christian Register.

IN PRAISE OF BOOKS

A book is, after all, man's truest friend;
One registers his birth, one soothes his end.
In sickness, 'tis a book which shows the way
To health,—if well, a book will speed the day.

Between men struggling, blinded to the light,
A law book intervenes to show the right.
In youth, at Learning's knee, a book is guide
To Truth. Old age with books is fortified.

A book stands ready at a moment's call.
It asks no favor; gladly giving all.—H. D. Shedd, Jr.

Among the New Decisions

Arrest — *necessity of showing warrant.* That to justify an arrest for past misdemeanor, the officer must have a warrant with him and show it on request, is held in Crosswhite v. Barnes, 139 Va. 471, 124 S. E. 242, which is followed in 40 A.L.R. 54, by an annotation on necessity of showing warrant upon making arrest under warrant.

Attachment — *right of junior attaching creditor to intervene.* That an attaching creditor has no right to intervene in the suit of a prior attaching creditor for the purpose of dissolving the latter's attachment because of alleged defects in the procedure, with the end in view of making himself the first attaching creditor by dissolving the prior attachment, is held in Strawberry Growers' Selling Co. v. Lewellyn, 158 La. 303, 103 So. 823, annotated in 39 A.L.R. 1502 on right of attaching creditor to intervene in the suit of a prior attachment creditor.

Bankruptcy — *effect on lien for alimony.* Where, by statute, a decree for alimony operates to create a general lien upon the husband's property, such lien is held not to be extinguished by his discharge in bankruptcy, in Westmoreland v. Dodd, 2 F. (2d) 212, which is accompanied in 39 A.L.R. 1279, by annotation on bankruptcy as affecting alimony.

Banks — *effect of negligence in paying check.* Negligence of a bank in paying a check to a bona fide holder after receiving a stop order is held not to be such as will prevent its recovering the proceeds from the one receiving them in the South Carolina case of National Loan & Exch. Bank v. Lachovitz, 128 S. E. 10, annotated in 39 A.L.R. 1237, on right of bank to recover back money paid on stopped check.

Bills and notes — *instrument payable in village — presentation.* A negotiable promissory note, payable in a named village, but without designating any particular place within the village, is held to be sufficiently presented, so as to charge indorsers, in the North Dakota case of Engen v. Medberry Farmers' Equity Elevator Co. 203 N. W. 182, when it is in the possession of a notary in the place named, with authority to receive payment, and to protest it for nonpayment; the maker not having any place of business or residence within the place named in the note.

The annotation which accompanies this case in 39 A.L.R. 915, deals with the question as to what amounts to presentation to charge parties secondarily liable on paper payable in a certain town or city, without further specification of place.

Conflict of laws — *divorce by publication — effect in other states.* If a divorce by published service of process against one who never was domiciled in the place where rendered is held valid in the state of his domicil, it is held to be valid in Ball v. Cross, 231 N. Y. 329, in the courts of a third state when questioned by one of its citizens who has contracted marriage with the one against whom the divorce was granted, although the cause for which the divorce was granted is not recognized as a ground of divorce in the latter state.

The question of extraterritorial recognition and effect on marital status of a decree of divorce rendered upon constructive or substituted service of process, is treated in the annotation appended to the foregoing case in 39 A.L.R. 600.

Constitutional law — *requiring attendance at public school — validity.* Requiring all children between the ages of eight and sixteen years to attend the public schools is held to unconstitutionally interfere with the liberty of parents and guardians to direct the upbringing and education of children under their control, in Pierce v. Society of Sisters, 268 U. S. 510, 69 L. ed. 1070, 45 Sup. Ct. Rep. 571, which is followed in 39 A.L.R. 468, by an annotation on extent of legislative power with respect to school attendance and curriculum.

Contempt — *destruction of evidence to evade search warrant.* That contempt of legal process is established by destruction of evidence upon approach of known police officers with a search warrant for intoxicating liquor is held in the Iowa case of Burtch v. Zeuch, 202 N. W. 542, annotated in 39 A.L.R. 1349, on preventing, obstructing, or delaying service or execution of search warrant as contempt.

Contracts — *implied — payment for feed consumed by cattle.* Where defendants knew where the premises of plaintiff were, and they knowingly, deliberately, and intentionally caused their cattle to enter thereon, with the intention that such cattle should obtain the benefit of the feed and pasturage thereon at the expense of plaintiff it is held in the Idaho case of Tsuboi v. Cohn, 231 Pac. 708, annotated in 39 A.L.R. 851, that an implied agreement was created whereby defendants were required to pay to plaintiff the reasonable value of such feed and pasturage.

Corporations — *liability on contracts of subsidiary.* The mere fact that one corporation by its ownership of the stock of a street railway company can impose its will upon the latter by the election of directors is held not to render it liable upon the latter's contract for paving the streets in which its tracks are laid, in the Pennsylvania case of Ambridge v. Philadelphia Co. 129 Atl. 67, annotated in 39 A.L.R. 1064, on liability of holding corporation on contracts of subsidiary.

Corporations — *stipulation for waiver of liability.* A corporation may, at the time of creating corporate obligations, stipulate for a waiver of the constitutional liability of the stockholders as a condition to the contract. Such waiver subsists in contract, and, if fairly made and supported by a valid consideration, is held to be enforceable, and not contrary to sound public policy, in Marfield v. Cincinnati, D. & T. Traction Co. 111 Ohio St. 139, 144 N. E. 689, which is annotated in 40 A.L.R. 357, on the validity of a provision in a contract with a corporation waiving the liability of stockholders.

Covenants — *restrictive — right of way as breach.* Where, pursuant to a plan to make a certain block a strictly residential district, a lot is conveyed with a provision that it shall

be used for residence purposes only, granting a right of way across it to occupants of lands outside the block, is held to be a violation of the restriction, in the Minnesota case of Klapproth v. Grininger, 203 N. W. 418, annotated in 39 A.L.R. 1080, on grant of right of way over restricted property as a violation of the restriction.

Crops — *title of possessor as against owner's estate.* That one severing crops from real estate was let into possession under a contract of purchase made with the administrator of the owner's estate is held in the Washington case of Fuglede v. Wenatchee Dist. Co-op. Asso. 235 Pac. 790, not to change the rule that one severing crops which he has grown has title to them, although he was wrongfully in possession.

This case is accompanied in 39 A.L.R. 953, by annotation on the right to crops sown or grown by one wrongfully in possession of land.

Damages — *duty to minimize — securing tenant for vacated premises.* The landlord is held not bound, upon vacation of the premises by the tenant during the term, to secure another tenant in order to minimize damages, in Abraham v. Gheens, 205 Ky. 289, 265 S. W. 778, which is accompanied in 40 A.L.R. 186, by annotation on the duty of a landlord, on abandonment of premises by tenant before expiration of term, to use diligence to procure another tenant.

Damages — *for tenant's failure to plant crop.* Where lease of land reserving as rent share of crops which tenant might raise thereon contains no provisions as to character of cultivation, acreage to be devoted to particular crops, or to be planted, damages for failure to plant any crop are held to be too speculative in the Mississippi case of Clifton v. Hester, 104 So. 609, which is followed in 39 A.L.R. 1355, by annotation on recovery for the failure of a cropper or one leasing land on shares, for failure to plant or cultivate a crop.

Death — *settlement by servant — effect.* A settlement made by the injured employee, after the injury and prior to his death, for his suffering and loss, is held in Goodyear v. Davis, 114 Kan. 557, 220 Pac. 282, not to be a bar to an action by the personal representative for the benefit of dependents for the death, if it resulted from the injury.

An annotation on release by, or judgment in favor of, person injured as barring action for his death, accompanies this case in 39 A.L.R. 563.

Deeds — *logs — reservation — measurement — including bark.* Under a reservation of timber that will measure a certain number of inches on the stump a certain distance from the ground, the measure is held to include the bark, in Cradock Mfg. Co. v. Faison, 138 Va. 665, 123 S. E. 535, which is followed in 39 A.L.R. 1309, by an annotation on measurement of standing timber.

Divorce — *effect on right of wife to acquire separate domicil.* That a decree a mensa et thoro against a wife estops her from gaining a separate domicil in another state for the purpose of instituting a proceeding for divorce, is held in Barber v. Barber, 47 Nev. 377, 222 Pac. 284, annotated in 39 A.L.R. 706, on separate domicil of wife for purposes of jurisdiction over the subject-matter of a suit by her for divorce or separation.

Domicil — *American in China.* That an American citizen may acquire a domicil in China, is held in the Montana case of Re Coppock, 234 Pac. 258, annotated in 39 A.L.R. 1152, on acquisition of domicil in countries granting extraterritorial privileges to foreigners.

Factors — *right to sell to cover advances.* A cotton broker who has received cotton subject to instructions

as to terms of sale, upon which he has made advances, is held in the Arkansas case of Brown v. Southern Grocery Co. 271 S. W. 342, to be entitled to sell it to reimburse himself for the advances, after notifying the owner that he will do so unless the owner puts up a margin to cover the advances, if only he exercises good faith in so doing.

Annotation on the right of a factor, commission merchant or produce broker to sell property to protect advances, is appended to this case in 40 A.L.R. 383.

Fixtures — *as between landlord and tenant — restaurant equipment.* The plumbing and lighting fixtures and marble wainscoting attached to the walls and extending below the floor tiling of a building leased for a restaurant are held to be within a covenant that all permanent improvements placed on the premises by the lessee shall become the sole property of the lessor, in the Louisiana case of Gauche Realty Co. v. Janssen, 104 So. 122, which is accompanied in 39 A.L.R. 1042, by annotation on what amounts to permanent improvements within the provision of a lease against their removal.

Highways — *liability for injury by warning signal in.* A city has no right to place in its street, for purpose of warning drivers of danger of street intersection, a "bumper" constituting a dangerous device or obstruction which an automobile driver, even in use of ordinary care, may not see, and by which a driver, who has no knowledge thereof, or who, through momentary forgetfulness or distraction of attention elsewhere, does not stop or reduce speed of car, is injured, though driving at a reasonable rate of speed, and the installation thereof is held to be negligence in Vicksburg v. Harralson, 136 Miss. 872, 101 So. 713, annotated in 39 A.L.R. 777, on liability for injury due to signal guidepost or "silent policeman" in street.

Highways — *neglect to repair — liability of overseer.* A road overseer is held not to be liable to one injured on a public highway, because of his failure to keep it in repair and safe for travel, in the Minnesota case of Stevens v. North States Motor, 201 N. W. 435, annotated in 40 A.L.R. 36, on personal liability of public official for personal injury on highway.

Improvements — *relief in equity.* That equity cannot afford relief to one making improvements of real estate when in possession, as against the holder of a subsequently docketed judgment against his grantor, to the extent of the value of his improvements, where the statute renders unregistered deeds invalid as against judgment creditors, is held in Eaton v. Doub, 190 N. C. 14, 128 S. E. 494, which is accompanied in 40 A.L.R. 273, by an annotation on allowance for improvements in reliance upon title or interest defeated by failure to record conveyance.

Insurance — *effect of sending worthless premium check.* The mere sending of a worthless check of the insured to the insurer, with which to pay a premium due on an insurance policy, in the absence of any fact or circumstance indicating it is received by the insurer as payment, is held not to constitute a waiver of the right of forfeiture for nonpayment of such premium in the New Mexico case of Martin v. New York L. Ins. Co. 234 Pac. 673, which is followed in 40 A.L.R. 406, by annotation on receipt of check for insurance as preventing forfeiture for nonpayment.

Insurance — *form of books — sufficiency.* Substantial compliance by an assured with conditions in his policy as to inventories and keeping of books is held to be sufficient in the Alabama case of Hanover F. Ins. Co. v. Wood, 104 So. 224; no particular form of bookkeeping is required, but there should be something that perpetuates in intelligible and reasonably

accessible form the memory of transactions as they are understood at their date.

Annotation on sufficiency of bookkeeping to satisfy the conditions of an insurance policy, is appended to this case in 39 A.L.R. 1436.

Insurance — *power of legislature to require.* Under its authority over public highways, and its power to provide for the public safety by the reasonable regulation of undertakings that are inherently dangerous, it is held in the New Hampshire case of Re Opinion of Justices, 129 Atl. 117, that the legislature may require persons seeking to operate motor vehicles upon the public highways to provide indemnity insurance.

Annotation on the constitutionality of compulsory liability insurance legislation as a condition of use of automobile not operated for hire, is appended to the foregoing case in 39 A.L.R. 1023.

Judgment — *full faith and credit — warrant of attorney.* A judgment on confession under the warrant of attorney in a promissory note, valid where entered, is held to be entitled to full faith and credit in other states in the Indiana case of Egley v. T. B. Bennett & Co. 145 N. E. 830, annotated in 40 A. L. R. 436, on judgment entered in sister state under warrant of attorney to confess judgment.

Judgment — *power of state to refuse to recognize foreign divorce.* That a state may constitutionally make invalid any divorce obtained in another state by one of its citizens against another, who goes into the foreign state to obtain a divorce for a cause occurring within its own limits while the parties resided there, or for a cause which would not authorize a divorce in its courts, is held in Langewald v. Langewald, 234 Mass. 269, 125 N. E. 566, which is followed in 39 A.L.R. 674, by annotation on extraterritorial recognition and effect, as regards marital status, of a decree of divorce or separation rendered in a state or country in which neither of the parties was domiciled.

Landlord and tenant — *when servant becomes tenant by sufferance.* One occupying his master's premises as servant is held in Turner v. Mertz, — App. D. C. —, 3 F. (2d) 348, not to become tenant by sufferance upon termination of the service until he is permitted to remain in possession sufficiently long for a tenancy to be presumed from the new relation.

The nature of the occupancy of a person occupying the premises of his employer as part of his compensation, is treated in the annotation appended to this case in 39 A.L.R. 1140.

Letter of credit — *duty to honor —noncompliance with contract.* A bank, it is held in Maurice O'Meara Co. v. National Park Bank, 239 N. Y. 386, 146 N. E. 636, cannot avoid honoring its irrevocable letter of credit upon presentation of the documents specified therein, on the theory that the contract to furnish the funds for which the letter was issued had not been complied with, although the terms of the contract are specified in the letter.

The liability of a bank on a letter of credit as affected by the quality or condition of goods for the purchase price of which it is issued, is considered in the annotation appended to this case in 39 A.L.R. 747.

License — *excessive fee — validity.* An exaction of a fee amounting to over $3,000 per year for a license to do business as a transient merchant, when the only service to be performed on behalf of the public is the receiving of the application, the issuance of a license, and the receiving and accounting for the money, is held to be unreasonable and void in the Michigan case of People v. Rawley, 204 N. W. 137, annotated in 39 A.L.R. 1381, on reasonableness of amount of license fee exacted of peddlers or transient merchants.

Lottery — *tax — sale of two articles for price of one, plus 1 cent.* The conducting by a merchant for advertising purposes of a sale in which two articles of the same class are sold for the price of one, plus 1 cent, is held in the North Carolina case of Boon-Iseley Drug Co. v. Doughton, 128 S. E. 341, not to be within the operation of a statute imposing a tax of $25 upon any person offering any article for sale, and proposing to present purchasers with any gift or prize as an inducement to purchase.

This case is followed in 39 A.L.R. 1032, by annotation on what transactions are within the purview of statutes or ordinances in relation to gifts or prizes or gift enterprises.

Marriage — *common-law — validity.* Statutes prescribing who may solemnize marriages and the form of the ceremony, and requiring a license to marry, with a certificate of health as a prerequisite, are mandatory and held to preclude the formation of common-law marriages as against public policy, in the Oregon case of Huard v. McTeigh, 232 Pac. 658, which is accompanied in 39 A.L.R. 528, by an annotation on the validity of common law marriage in American jurisdictions.

Marriage— *concealment of insanity.* Failure, under the circumstances, to disclose past insanity, was held not to be a ground for annulment of the marriage contract, in the Minnesota case of Robertson v. Roth, 204 S. W. 329, which is followed in 39 A.L.R. 1342, by an annotation on concealment of insanity or diseased mental condition as a ground for annulment of a marriage.

Mines — *fixtures — right of assignee of leasehold.* The casing of an oil well which has become a part of the realty is held not to pass to an assignee of the lease, in the Texas case of Moore v. Carey, 269 S. W. 75, annotated in 39 A.L.R. 1247, on rights and remedies in respect of casings under oil and gas leases.

Sale — *implied warranty — hog cholera serum.* A manufacturer selling a product for the immunization of hogs from cholera, is held not to impliedly warrant that it will protect such animals from that disease, in the Iowa case of Balhorn v. Pitman Moore Co. 200 N. W. 601, annotated in 39 A.L.R. 397, on the liability of a seller of serum or vaccine matter for use on live stock, for breach of warranty or negligence.

Succession taxes — *discrimination — validity.* Mere constitutional authority to levy taxes on inheritance is held not to authorize progressive taxation according to the amount of the estate nor the imposition of higher taxes upon collateral than upon lineal heirs, in the New Hampshire case of Williams v. State, 125 Atl. 661, annotated in 39 A.L.R. 490, on constitutionality of discrimination in succession tax based on relationship or amount of estate.

Trial — *question for jury — reasonableness of arrest of passenger.* Whether or not a conductor acts as a reasonably prudent man in causing the arrest of a passenger for refusal to pay fare when unable to produce a railroad ticket, which he says was taken up by a former conductor, is held to be for the jury, in Hyman v. New York C. R. Co. 240 N. Y. 137, 147 N. E. 613, where the passenger produces baggage checks and tickets for Pulman space to destination, and the former conductor telegraphs that he has not the ticket.

Dispute over payment of fare as justifying arrest of passenger by carrier, is treated in the annotation appended to this case in 39 A.L.R. 858.

Waters — *draining mine into stream — validity.* That polluted water from a mine cannot be drained into a natural stream to the injury of a public water supply taken from the stream, is held in Pennsylvania R. Co. v. Sagamore Coal Co. 281 Pa. 233, 126 Atl. 386, annotated in 39 A.L.R. 882, on pollution of stream by mining operations.

Recent British Cases

Automobile — *violation of terms of license or regulation by servant.* That the owner of an automobile was liable to the penalty imposed by the Roads Act for a violation of a road vehicle regulation authorizing limited trade licenses, subject to the observance of certain conditions, one of which provided "that not more than two persons in addition to the driver shall be carried," was held in Griffiths v. Studebakers [1924] 1 K. B. 102, 12 B. R. C. 1062, where a limited trade license had been issued on the owner's car, and it was driven on the highway by one of the owner's servants with more than two persons in addition to the driver, although this was without the knowledge, and contrary to the owner's express orders. An annotation on the criminal liability of an automobile owner for violation of terms of license or regulation by servant is appended to the report of this case in 12 B. R. C. 1066.

Landlord and tenant — *covenant to rebuild — effect of change of building laws.* A lessor was held in Re De Garis [1924] Vict. L. R. 38, 13 B. R. C. —, not relieved from liability for not fulfilling his covenant in a lease of a wooden building to rebuild the premises in case of destruction by fire, where, under authority existing at the time the lease was made, a by-law was passed by the municipality after the lease became effective, prohibiting the construction of wooden buildings within the area in which the leased premises were situated. An annotation appended to the report of this case in 13 B. R. C. —, deals with the question of change of building laws as terminating obligation under covenant in lease to rebuild.

New trial — *conversation by attorney with juryman.* That there was no "treating" of a juryman by the prosecuting attorney which entitled the accused to a new trial was held in The King v. Ashe, 50 N. B. 82, 12 B. R. C. 919, where in the course of a trial the attorney who was about to return home in his automobile consented to a request to take a passenger, but on account of conversation with others did not recognize the passenger as a juryman until he had started his car when he at once told the juryman that he should not be there, and that he did not wish any conversation with regard to the trial, and no such conversation took place. An annotation is appended to the report of this case in 12 B. R. C. 929, dealing with attorney's acts in transporting a juror or furnishing him with liquor etc., as constituting ground for new trial, or reversal in criminal case.

Theatres — *mortgage — fixtures.* That seats in blocks of four or eight attached to the floor of a theatre between the seats by iron standards with iron feet were fixtures which passed as such under a mortgage of the freehold land, "together with the cinema hall with its fixtures and appurtenances" was held in Vaudeville Electric Cinema v. Muriset [1923] 2 Ch. 74, which is reported in 13 B. R. C. —, together with an annotation dealing with property installed in theatres as fixtures.

Workmen's compensation — *dissolution of partnership — liability of old firm.* An accident to a workman employed after the dissolution of a partnership, by one of the partners who continued the business under the old firm name, was held to impose no liability upon the old firm to compensate the injured workman, in Germano v. Gresham Fire & Acci. Ins. Soc. [1924] Vict. L. R. 592, 13 B. R. C. —, and consequently there was held under the facts to be no liability by an insurer which had issued a policy to the firm before its dissolution. The report of this case in 13 B. R. C. —, is accompanied by an annotation on effect of change in makeup of firm insured upon liability, under employer's indemnity or fidelity policy.

A.L.R. Annotations in Volumes 39 and 40 Include the Following Subjects:

Alteration of instruments — Liability of party to commercial paper so drawn as to be easily alterable as to amount. 39 A.L.R. 1380.

Assignment — Assignability of contract to furnish all of buyer's requirement or to take all of seller's output. 39 A.L.R. 1192.

Attachment — right to recover attorneys' fees for wrongful attachment. 39 A.L.R. 527.

Banks — Bank deposit for purpose of meeting certain checks or classes of checks. 39 A.L.R. 1158.

Banks — Trust or preference in respect of money placed in bank for purpose of transaction with third person where bank subsequently becomes insolvent. 39 A.L.R. 930.

Boards — Necessity as justifying action by judicial or administrative officer otherwise disqualified to act in particular case. 39 A.L.R. 1476.

Buildings — Validity of public regulations as to garages. 40 A.L.R. 341.

Colleges — Mandamus to compel enrolment or restoration of pupil in state school or university. 39 A.L.R. 1019.

Commerce — Powers of Federal and state governments respectively as regards railroad stations. 39 A.L.R. 1372.

Constitutional law — Constitutionality of statute penalizing unsuccessful appeal to courts from action of administrative board. 39 A.L.R. 1181.

Constitutional law — Regulations affecting auctions or auctioneers. 39 A.L.R. 773.

Constitutional law — Validity of statute precluding alien from acting as guardian. 39 A.L.R. 943.

Contracts — Recovery by one who has breached contract for services providing for share in proceeds or profits as compensation. 40 A.L.R. 34.

Contracts — Validity and enforceability of promise to support or provide for illegitimate child. 39 A.L.R. 434.

Costs — Expense of litigation, other than taxable costs, as basis of separate action against party to former suit. 39 A.L.R. 1218.

Cotenancy — Accountability of cotenants for rents and profits or use and occupation. 39 A.L.R. 408.

Covenants — Oil or gas or other mineral rights in land as affected by language in conveyance specifying purpose for which the property is to be used. 39 A.L.R. 1340.

Criminal law — Violation of Sunday statute which prescribes a fine without other punishment, as a criminal offense. 39 A.L.R. 1397.

Damages — Excessiveness or inadequacy of verdict in action for false imprisonment or for malicious prosecution. 40 A.L.R. 297.

Damages — Liability of one causing personal injury for consequences of negligence, mistake, or lack of skill of physician or surgeon. 39 A.L.R. 1268.

Embezzlement — Who bears loss of funds while in hands of escrow agent. 39 A.L.R. 1080.

Estoppel — Estoppel of mortgagor or seller to deny existence of property mortgaged or sold. 40 A.L.R. 382.

Evidence — Admissibility and weight of evidence of resemblance on question of paternity or other relationship. 40 A.L.R. 97.

Evidence — Applicability of "res ipsa loquitur" to explosion of gases or chemicals. 39 A.L.R. 1006.

Evidence — Necessity and character of corroboration of confession of sexual offence. 40 A.L.R. 460.

Evidence — Privilege of communications by or to nurse or attendant. 39 A.L.R. 1421.

Execution — Necessity of new process to support proceedings supplementary to execution. 39 A.L.R. 1498.

False imprisonment — Liability for false imprisonment, of officer executing warrant for arrest as affected by its being returnable to wrong court. 40 A.L.R. 290.

Garnishment — Jurisdiction to garnish debt as affected by previous assignment by principal defendant to a nonresident served constructively. 39 A.L.R. 1465.

Hospital — Liability of private noncharitable hospital or sanitarium for improper care or treatment of patient. 39 A.L.R. 1431.

Imprisonment for debt — Constitutional provision against imprisonment for debt as applicable to nonpayment of tax, fee, or other obligation to government. 40 A.L.R. 77.

Injunction — Meritorious defense as a condition of injunction against judgment for want of jurisdiction. 39 A.L.R. 414.

Insurance — Death from inhaling gas. 40 A.L.R. 52.

Insurance — Provision in policy of life or accident insurance as to "self-destruction," "death by own hand," and other forms not employing term "suicide," as applicable to death by accident. 39 A.L.R. 1088.

Insurance — Subrogation of insurer to insured's rights against the carrier where shipping contract provides that carrier shall have benefit of insurance. 39 A.L.R. 1116.

Interest — Right of creditor to interest after bankruptcy, declared insolvency, or appointment of receiver, where assets are more than sufficient to pay the principal of all claims. 39 A.L.R. 457.

Interest — When contract construed to require interest to be paid in advance. 39 A.L.R. 951.

Landlord and tenant — Eviction before expiration of term as affecting right to remove trade fixtures. 39 A.L.R. 1099.

Landlord and tenant — Renewal or extension of lease as extending time for exercise of option to purchase contained therein. 39 A.L.R. 1108.

Levy and seizure — Levy upon or garnishment of contents of safety deposit box. 39 A.L.R. 1215.

Limitation of actions — Acknowledgment or payment to one of several obligees as tolling Statute of Limitations in favor of others. 40 A.L.R. 29.

Limitation of actions — Application of rule of ejusden generis to statutes of limitation. 39 A.L.R. 1404.

Lost instruments — Constitutionality, construction and effect of statutes in relation to issuance by public body of duplicates of mutilated, lost, or destroyed bonds or warrants. 39 A.L.R. 1246.

Master and servant — Liability of master for damages to third person from wanton or wilful act of servant directed against master. 40 A.L.R. 207.

Mortgage — Foreclosure of one mortgage as affecting another mortgage on the property held by the same party. 39 A.L.R. 1485.

Muncipal corporations — Power of municipal corporation to purchase or charter a boat or barge. 39 A.L.R. 1332.

Negligence — Attractive nuisances. 39 A.L.R. 486.

Negligence — Liability of manufacturer or packer of defective article for injury to person or property of ultimate consumer who purchased from a middleman. 39 A.L.R. 992.

Partition — Right to partition as affected by severance of estate in mineral from estate in surface by one or more of cotenants. 39 A.L.R. 741.

Pledge — Right of pledgee to allowance for expenses in connection with pledge. 40 A.L.R. 258.

Public service commissions — Power of public service commission with respect to regulation of street railways. 39 A.L.R. 1517.

Receivers — Effect of receiver's failure to discharge tax liens. 39 A.L.R. 1415.

Receivers — Power of receiver of private corporation to issue receivers' certificates. 40 A.L.R. 244.

Receivers — Rights in receivership proceeding as between mortgagee and creditor furnishing supplies required or used for operation, maintenance, and upkeep, of railroad, or street railway, where there has been diversion of current earnings to benefit of mortgagee. 40 A.L.R. 8.

Search and seizure — Constitutional guaranties against unreasonable searches and seizures as applied to search for or seizure of intoxicating liquor. 39 A.L.R. 811.

Sheriff — Personal liability of peace officer or his bond for negligence causing personal injury or death. 39 A.L.R. 1306.

Specific performance — Accepting paid employment or remaining in such employment as part performance which will take oral contract to convey or devise real property out of Statute of Frauds. 40 A.L.R. 223.

Taxes — Constitutionality of statute relating to taxation of property of municipality located outside of its own limits. 39 A.L.R. 1232.

Taxes — Value of shares held by one corporation in other corporation as deductible item in taxation of former corporation. 39 A.L.R. 1208.

Trademarks — Time as an element in determining whether a descriptive term has acquired a secondary meaning entitling it to protection against unfair competition. 40 A.L.R. 433.

Vendor and purchaser — Relief of purchaser against forfeiture of land contract. 40 A.L.R. 182.

Workmen's compensation — Injury or death due to elements. 40 A.L.R. 400.

New Books and Recent Articles

WAGNER, DAMAGES, PROFITS AND ACCOUNTINGS IN PATENT, COPYRIGHT, TRADEMARK AND UNFAIR COMPETITION CASES. 1 volume $7.50

MONTGOMERY'S MANUAL OF TAX PROCEDURE FOR 1926, 2 volumes 18.00

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INSTALMENT SALES. A discussion of sales in which the title is reserved by way of security commonly called Conditional Sales together with a treatment of instalment sales that are not conditional. An appendix includes forms and statutes. By Willis A. Estrich. (The Lawyers Co-operative Publishing Company, Rochester, New York). One volume (ready March 15, 1926) $15.00

This volume covers the law relating to sales in which the purchase price is payable in instalments. Such sales are of vast extent at the present time. The common condition of such sales that the title shall remain in the seller until the purchase price has been paid, gives rise to the majority of legal questions arising out of such sales.

The general nature of the seller's interest and that of the buyer, the respective rights of the parties both before and after default, are discussed. The rights of the parties after default has raised a multitude of legal questions. The right to take possession, the right to recover the purchase price after taking possession, the right to recover the purchase price, and the right to recover possession after suing and obtaining a judgment for the purchase price but before satisfaction, are vexing questions which are fully covered.

When, where, and how it is necessary to file or record the contract in order to protect the seller against third persons is an important question in connection with such sales, and one to which the book devotes considerable discussion.

The instalment selling of automobiles, while no different in its legal aspect than that of the selling of other property, has raised many questions, particularly in connection with the transfer of the seller's interest by way of security. The right of the seller to transfer his interest in the contract either absolutely or by way of security, the right of a mechanic employed by the buyer to a lien on the automobile as against the seller, the right to forfeit the automobile for violation of law by the buyer, and the right of the buyer to register the automobile in his own name, are questions that have arisen in connection with such sales, and all receive a thorough discussion in the book.

The above are only a few of the questions that are considered. The book is an exhaustive treatise upon sales in which the price is payable in instalments. An appendix containing forms and the statutes of the various states relating to conditional sales including the Uniform Conditional Sales Act, is included.

INFANTS CONTRACTS.—An interesting paper on this subject by George W. Goble, appears in the December 1925 Illinois Law Review. He there points out the most important legal relations created by a contract entered into between an infant and an adult for the sale or exchange of chattels. He observes: "No doubt it is generally correct to say that an infant's contract is voidable and that to avail himself of the privilege of infancy he need not restore what he has received under the contract. But such statements do not fully and completely describe the relations created by a contract between an infant and an adult, and for that reason they need amplification if they are to be helpful in the solution of concrete legal problems."

WOMEN JURORS.—The question of women and jury service, is treated in an interesting paper by Elizabeth M. Sheridan, in the American Bar Association Journal for December, 1925. The paper was read before the annual meeting of the West Virginia Bar Association in 1925. The author's study of the cases shows greater weight of authority for

the view that suffrage does not carry as a necessary incident the imposition of jury duty. The effect of women on juries in jurisdictions where their presence is required is considered, as well as how certain practical difficulties have been met.

WILLS.—The subject of incorporation of external writings into wills, by reference, integration and non-testamentary act, is discussed in an interesting article by Alvin E. Evans, in the Columbia Law Review for 1925.

SELF INCRIMINATION.—In the University of Pennsylvania Law Review for December 1925, Judge John C. Knox has a thoughtful article upon this subject. He states that the conviction of criminals has become so difficult as to constitute a menace to life and property; and he believes that "a not insignificant reason for the inefficiency of which complaint is long and loud, is the rigidity in which the self incriminating clauses of the Constitution have been interpreted by our meticulous courts."

LABOR INJUNCTIONS.—A valuable article by J. P. Chamberlain, on the Legislature and Labor Injunctions, appears in the December 1925 American Bar Association Journal. The writer deals with the attempt on the part of the workers to limit the use by employers of the formidable weapon of injunction. The author observes: "So far, direct legislative action limiting injunction, does not appear to have had any appreciable effect. Under the opinion in Truax v. Corrigan, 257 U. S. 312, it is doubtful if much can be done to change the power of the courts substantially in this respect, especially if the act is directed against injunctions in labor disputes alone. There the majority of the court held invalid an act of Arizona which was interpreted by the state court as forbidding an injunction in a boycott case where the boycott was accompanied by tortious acts. The Supreme Court held that there was no valid reason for classifying labor disputes separately."

NEW LEGAL MAGAZINE.—The initial number of The Notre Dame Lawyer (November 1925) is an excellent one. It contains articles on Trial of Criminal Cases and Adult Probation in the Chancery Court, by Judge Ben B. Lindsey; The Character of a Lawyer, by Joseph Scott; The Scopes Case, by Dudley G. Wooten; and Government by Bureaucrats, by Samuel B. Pettengill. There are also notes on recent cases.

The new publication will be issued monthly. The subscription price is $2.50 per year. The magazine will be cordially welcomed by the profession.

Musically Explained

In a wetter country than our own, a young man was suffering from the well-known effects of "the night before." His wife was worried about his unwonted condition and persuaded him to see a doctor. He did so, and as he was leaving he remarked, "My wife will want to know what I'm suffering from doctor." "Oh, tell her it's syncopation," was the reply.

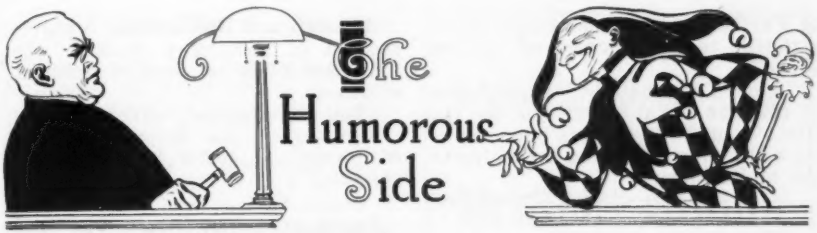
On reaching home he repeated what the doctor had said. The wife did not know what the word meant, so she looked it up in the dictionary and read, "Syncopation—an uneven movement from bar to bar."

—Boston Transcript.

Safety First. Chinese Style

We read that in Shanghai professional writers are hired to warn pedestrians against jay walking. An example of their output runs: "Now the swift motor car and the clanging street car are just like tigers, and if you do not take care to watch the policeman at the corner and obey his signals you will not live to grow up and acquire many sons, but will be killed, and your sons, too, so that your ancestral tablets will be unattended. The road is like a tiger's mouth; from its center keep away."

—Boston Transcript.



Finis. A chauffeur was asked: "Supposing you were going 60 miles an hour downhill with a stone wall at the bottom of it, and your brakes wouldn't act; what would you do?"

"Nothing to do," answered the chauffeur. "It's done."

—Boston Transcript.

Unto the End. "By the way," said the lawyer who was drawing up the will, "I notice that you've named six bankers to be your pallbearers. Wouldn't you rather choose some friends with whom you are on better terms?"

"No, that's all right," was the quick reply. "Those fellows have carried me so long they might as well finish the job."

—Boston Transcript.

Complete. An Oklahoma correspondent writes: "I have just run across the following warranty in a deed, as shown by the abstract: 'That I am the lawful surviving husband of L— J—, deceased; that there was born to us during our lawful wedlock two living children, together with all the improvements thereon and the appurtenances thereunto belonging.'"

A Sporting Proposition. First insurance man: "Well, I wrote $5,000 on Olesport to-day."

Second ditto: "What! I've been after that old fellow for a year."

First: "You didn't know how to tackle him. I offered to bet him $5,000 against the amount of the first payment that he would live another year."

—Boston Transcript.

A Man of Principle. One of the witnesses at a royal commission appointed to inquire into a case of alleged bribery in an election stated that he had received $25 to vote Conservative, and in cross-examination it was elicited that he had also received $25 to vote Liberal.

Mr. Justice Matthew, in amazement, repeated: "You say you received $25 to vote Conservative?"

"Yes, my Lord."

"And you also received $25 to vote Liberal?"

"Yes, my Lord."

"And for whom did you vote at the finish?" asked the astonished judge, throwing himself back in the chair.

And the witness, with injured dignity in every line of his face, answered with great earnestness: "I voted, my Lord, according to my conscience!"

—Vancouver Province.

Not Built As Law Prescribed. A tall, cadaverous individual tried to squeeze himself into a seat in the car between two burly farmers. Finding this beyond him, he stood up and said: "Excuse me, gentlemen, but you really must sit up a bit. Don't you know that according to act

of Parliament each passenger is restricted to 18 inches of sitting space?"

"Aweel, my mannie," replied one of the men, "that's very fine for the like o' you, but ye canna blame us if we were no' constructed according to act of Parliament."

—Boston Transcript.

An Exception to the Rule. The more a man gets the more he wants —unless the police judge is dealing it out.

—Boston Transcript.

Vindicated Herself. One of the best known ways of torturing one's wife is to take company home to dinner unexpectedly. Judge Blank was in the habit of doing this, and on one occasion he received a very neat little lesson from his wife.

The judge had arrived home with three legal friends, and that day the larder was unusually empty. His wife preserved her equanimity, however, and managed somehow to get up a rather skimpy meal. But when the dinner was over and the cigars were being lighted, she said; Gentlemen, I wish to say one word. You have dined to-day with the judge. Will you do me the honor of dining to-morrow with me?"

The point was quickly appreciated, her invitation cordially accepted, and the next day they all sat down to a dinner worthy of such an accomplished hostess.

—Boston Transcript.

Purely Accidental. A resident of Atlanta took out an accident insurance policy and then fell ill of pleurisy. He brought action against the insurance company and lost in the municipal court, which decided that pleurisy was not an accident, but a visitation of God. The superior court reversed the finding on the ground that a visitation of God to a resident of Atlanta was an accident.

—Lawyer and Banker.

Absolution or Restitution. A negro, accused of stealing a chicken, was found not guilty for want of sufficient evidence.

"You are acquitted," said the judge.

The negro's jaw dropped. "What dat mean? I gotter bring back de chicken?"

Justifiable Indignation. "Yes, Mrs. Flannagan," said Mrs. Murphy, "Pat and I part to mate no more. I went to the hospital to ask after him. 'I want to see my husband,' says I. 'Ye can't,' says the doctor, 'he's under the inflooence of Ann Æsthetics.' 'I don't know the lady,' says I, 'but if my lawful wedded husband can act loike that when he's so ill, I'll have a divorce.'"

—Boston Transcript.

Another Definition. On page 130 of Case and Comment for September-October, writes Henry M. Haviland of the New York, N. Y., Bar, is a small boy's definition of "alibi," which seems a mild rendering of the negro's definition: "An alibi is provin' you was at a pra's meetin' wha' you wasn't, instead of bein' at a henhouse wha' you was."

An Impossible Mistake. Sympathetic Vistor: Was it your craving for drink that brought you here, my poor man?"

Convict: Be yourself, lady! Do I look so stupid as to mistake this joint fer a bootlegger's?"

—Boston Transcript.

Query or Assertion. Counsel (to witness): You are married?"

Woman (blushing): "Yes, but how did you know?"

—London Tit-Bits.

Hubby Heard the Noise, Too. Mrs. Hicks (relating burglar scare): "Yes I heard a noise and got up, and there under the bed I saw a man's legs."

Mrs. Wicks: "Mercy! The burglar's?"

Mrs. Hicks: "No, my husband; he had heard the noise too."

—London Saturday Journal.

Not Excessive. "Madam, you lost your thumb in this trolley accident all right, but how can you prove it was worth the $3,000 you are suing the company for?"

"Judge, it was the thumb I kept my husband under."

—Columbia Record.

Law-Abiders Preferred. Footpad: "Why didn't you frisk that guy that just passed?"

Second Ditto: "He didn't look like er lawabidin' citizen."

First: "Wot difference does that make?"

Second: "I was afraid he carried a gun."

—Boston Transcript.

Unbiased. Sam, impaneled for jury service at a murder trial, had seemed a little too anxious to serve.

"Do you know the accused?" he was asked.

"Yassuh—dat is, nossuh," he replied, realizing that if he made an affirmative answer he would be disbarred from serving.

"Have you made up your mind as to his guilt or innocence?"

"Oh, no, suh."

"You think, then, that you could give his case a fair hearing?"

"Yessuh," replied Sam. "Leastways, ez fair ez de ole scamp deserves."

—American Legion Weekly.

True Sympathy. Lawyer: "What? Ten thousand a year to your wife if she marries again, and only $5,000 if she doesn't? Most unusual that!"

Client: "Yes, but you see I am considering my successor. He deserves extra."

—Boston Transcript.

Retiring. Stern Wife: "Ernest, what are you doing with all those messy bits of paper?"

Henpecked Husband: Making a—er—a wish, my love."

"Making a wish?"

"Yes, darling, I—er—wouldn't presume to call it a will!"

—Humorist, London.

The Difference. A lawyer was examining a witness whom he had reason to suspect of deliberate perjury.

At length, becoming impatient, he asked very impressively: "Do you know the nature of an oath?"

"I do."

"Are you aware that you are commanded in the Bible not to bear false witness against thy neighbor?"

"I am; but I'm not bearin' false witness agin him. I'm bearin' false witness for him."

—Exchange.

The Way to Peace. "I was only acting the part of peacemaker," explained a prisoner.

"But you knocked the man senseless!" said the magistrate.

"I did," was the answer. "There was no other way to get peace."

—Pearson's Weekly.

Used to Postponements. "Then you like working for a judge?"

"You bet."

"Dosn't he kick when you put things off?"

"Naw, he puts off half his own work every day."

—Louisville Courier-Journal.

Headed for Trouble. "What's the excitement?"

"A motorist is trying to convince a traffic policeman that he didn't break a traffic law."

"Is he making any progress?"

"Yes. He's getting closer to the police court every minute."

—Birmingham Age-Herald.

Almost. The secretary of the Bar Association was very busy and very cross one afternoon, when his telephone rang.

"Well, what is it?" he snapped.

"Is this the city gas works?" asked a woman's soft voice.

"No, madam," roared the secretary. "This is the Bar Association."

"Ah," came from the lady's end in the sweetest of tones, "I didn't miss it so far, after all, did I?"

—Dry Goods Economist.

Innocent Bystander. Judge: "Your only complaint against this woman is that she threw a teapot at her husband?"

Complainant: "Well, yes."

Judge: "Then what business is it of yours? She didn't throw it at you."

Complainant: "I know, your Honor, but if she had she might have hit her husband, and I wouldn't have this big lump on my head."

—Boston Transcript.

"Developed" Is Right! A judge's little daughter, who had attended her father's court for the first time, was very much interested in the proceedings. After her return home she told her mother: "Papa made a speech, and several other men made speeches to twelve men who sat all together, and then these twelve men were put in a dark room to be developed."

—Pearson's Weekly.

Probably Would. When a man gives a motor cop a tale of woe, the cop merely says: "Tell it to the judge."

But when a pretty girl gives the cop a dazzling smile, he doesn't advise her to try that on the judge.

He knows it would probably work.

—Louisville Courier-Journal.

HORSE SENSE

In Baumgartner v. Hodgdon, 105 Minn. 22, 116 N. W. 1030, which was an action to recover damages for an assault and battery, the ground of provocation was a remark which the plaintiff made concerning defendant's horse. One version was that plaintiff stated that defendant had "a thing of a horse;" another version was that plaintiff remarked that defendant's horse was the "damnedest-looking horse he ever saw." The court said: "As we view the matter it is not important which remark was made. Both may be conceded to have been slanderous and defamatory of the horse, more so, perhaps, than to speak of an ordinary dog as a worthless cur, which beyond question the dog would have a right to resent, if not true. If true, however, a due respect for the law would require of him meek submission; for the old rule of the common law, that the greater the truth the greater the libel, does not apply to his kind.

"The language contains nothing whatever to prompt a person possessed of ordinary common sense and judgment to commit a breach of the peace. The most that can be said of it is that it was disgraceful to the horse; but the horse was not present, and there was no horse trade on. Moreover, we have the right to assume that the animal was endowed by nature with the usual amount of 'horse sense,' and that, had the remark been overheard by him, he would have dismissed it without reply as the opinion of one not competent to speak on the subject. Therefore, as a matter of law, the remark could furnish no pretext whatever for the assault committed by defendant, and was not a proper subject for consideration in mitigation of damages."

Another Instance

The humorous item entitled "An All-round Citizen," which appeared in the September-October Case and Comment on page 127, and which relates to the difficulty of making collections in a small place, where an individual may not only be the debtor, but hold all important positions, is paralleled by the experiences of a South Dakota correspondent who writes: "I received account to collect against a retailer whom I noticed to be a woman, and as payment was not promptly made, I prepared summons and mailed same to the City Marshal for service. I received no reply for a few days and then wrote him asking that the papers be served as he was an officer, and added, 'England expects every man to do his duty,' and shortly I received the summons returned duly served, and to my surprise I found that the husband, City Marshal, had served them upon his wife, the debtor.

"In another instance, I received account against debtor at a certain inland town; wrote debtor, and receiving no reply, I mailed summons to the City Marshal to be served upon debtor. Also wrote the Postmaster in regard to the financial standing of debtor, as I knew there must be a Postmaster, as although an inland town, it was a Post office. I got no reply and later threatened to send another summons to the Sheriff, some 65 miles away, and make debtor pay the costs, if he would not serve the papers, or hand them to someone to serve on him, if he should happen to be the City Marshal, but he did nothing. I sent papers to the sheriff, who traveled 65 miles both ways, total 130 miles, and served the papers at 20 cents per mile, and we later got judgment, and still later collected the judgment WITH COSTS. I later learned that the debtor, was no other than the only man in town, being the City Marshal, Postmaster, etc., which bears a similarity to the item in your joke column."

English Abroad

I am tempted to speak of the amusing things in Chinese travel, of the dressmaking shop sign "Ladies have fits upstairs." Of another famous sign, "Fur coats to order made either of your skin or my skin." And of the other tailor in Soochow, whose sign reads, "Ladies tailor making any." In the recent disturbances when everybody was talking, some of the Chinese merchants put up the sign at their places of business, "Don't stand along and made aloud." I suppose they meant, "Don't loiter around here and talk," but probably those signs are much better than any you or I could write in Chinese.—From Remarks of Hon. John F. D. Meighen before Minnesota State Bar Association.